

REMARKS

This responds to the Office Action dated February 20, 2008.

Claims 1 and 26 are amended, no claims are canceled herein, and no claims are added. As a result, claims 1-3, 7, 9-12, and 14-26 are now pending in this application.

§103 Rejection of the Claims

Claims 1-3, 7, 9-12 and 14-26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Carballada et al. (U.S. Patent No. 5,653,969) in view of Hutchins et al. (U.S. Patent No. 5,804,173). The Examiner has rejected claims 1-3, 7, 9-12, and 14-26 as being “unpatentable over 5,653,969 (‘969) in view of US Patent 5,804,173 (‘173).”

The Applicant disagrees for the reasons set forth.

The ‘969 patent describes copolymers that are formed by the co-polymerization of randomly repeating A monomer units and B macromonomer units. One A monomer unit is described as methyl methacrylate. Poly(n-ethyl acrylate) is described as a B macromonomer unit. However, the ‘969 patent does not describe **“the ratio of ethyl acrylate units to methyl methacrylate units in the polymer is in the range of 7.5-8.5 : 1.8-2.3.”** The Examiner acknowledges that the ‘969 patent does not teach a surfactant such as ethoxylated alcohol and does not teach sunscreen. Furthermore, the ‘969 reference did not anticipate that a film-forming agent selected from the group comprising one or more ethyl acrylate/methylmethacrylate **copolymers in which the ratio of ethyl acrylate units to methyl methacrylate units in the polymer is in the range of 7.5-8.5 : 1.8-2.3.**, wherein the film-forming agent is emulsifiable with water; and a solvent selected from the group consisting of an aliphatic hydrocarbon and a volatile silicone derivate wherein the aliphatic hydrocarbon solvent and volatile silicone derivate solvent are not miscible with water and are emulsifiable with the film forming agent could be employed to form a gel having an elasticity that is 4 to 5 times greater than the elasticity of the film-forming agent alone and the gel has a softness greater than the film-forming agent.

To the contrary, the ‘969 patent teaches away from what is claimed. The products described in the ‘969 patent include shampoos and conditioners, “hair care compositions.” The formulation embodiments claimed herein are for cosmetic products other than shampoos and conditioners. The

formulation embodiments described herein are for cosmetic applications such as a styling gel, that is not immediately washed off the hair, as is a shampoo or hair conditioner. The properties of the hair care products described in the '967 patent teach away from what is claimed.

The '173 patent refers to completely different copolymers from those claimed in the application or the '967 patent. The '173 patent describes a copolymer complex comprising:

- (1) a copolymer from A and B monomers;
- (2) a complexing fatty acid, and
- (3) a volatile hydrophobic solvent (see col. 2, 1, 13-19).

The monomer A in the '173 patent is :

t-butyl acrylate
t-butyl methacrylate
t-butylstyrene
t-ethylhexyl methacrylate

The monomer B in the '173 patent is:

NN-dialkylaminoethyl(meth)acrylate
NN-dialkaminopropyl(meth)acrylate
NN-dialkylaminopropyl(meth)acrylamide

In the claimed invention, the monomers, after restriction of claim 1 to ethyl acrylate/methylmethacrylate copolymers, are ethyl acrylate and methyl methacrylate. Both are different from the monomers described in the '173 patent. Furthermore, neither of the copolymers is complexed with a fatty acid. The Examiner responded by stating that in the Examiner's opinion, this difference was not "persuasive." The Examiner has not provided any reason why a person of ordinary skill in the art would use materials described in the '173 patent in embodiments claimed herein.

“The test is not whether each difference individually is obvious; rather, it is whether the claimed invention as a whole is obvious.” In re Buehler (CCPA 1975) 515 F2d 134, 185 USPC 781.

The claimed invention embodiment is a copolymer complex that has excellent temporary styling for hair and improved “wash off” features. The formulation described in the ‘173 patent describes copolymers that are different from what is claimed and a product that is water resistant and has no wash-off characteristics. The Examiner has made a statement that “‘173 also teaches such composition having an improved ‘wash out’ characteristics,” but has provided no support for this statement.

The Examiner’s reference of column 24 of the ‘173 patent is to a thickener, starting with column 23, line 39. The thickeners are crosslinked polymers, column 23, lines 40/41, and are described in greater detail in column 24, lines 5ff. Furthermore, ethacrylic acid is mentioned as a possible monomer for the thickener, but methylmethacrylic acid is not mentioned.

The ‘173 patent does not teach a use of the copolymer ethyl acrylate/methyl methacrylate. Furthermore, the claimed acrylate derivative is different from the thickener described in the ‘173 patent. Applicant asserts it was not obvious for a person skilled in the art to use the teachings of the ‘173 patent for a gel claimed herein. The Examiner has responded to this ground of the Applicant’s assertion of non-obviousness by asserting that it is obvious..

However, the Examiner’s own statements illustrate that the ‘173 patent and ‘969 patent teach away from each other. The Examiner has admitted that the ‘969 patent describes a product that does not include “wash out” properties. In this office action, the Examiner has argued that the ‘173 patent does describe a product with “wash out” properties. Applicant asserts that the Examiner’s own arguments support the contention that the references teach away from each other and do not suggest combination because the ‘969 patent teaches away from “wash out” and, according to the Examiner, the ‘173 patent describes a “wash out” property.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney (612) 373-6976 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6976

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By J. M. Kalis
Janal M. Kalis
Reg. No. 37,650

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 18 day of August 2008.

CANDIS BUENDING

Name

Signature

Candis Buending